IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 29606 of 2006(Y)

PETITIONER:

SAMUEL JOSE,
PROPRIETOR, THANKOM CASHEW FACTORY,
ANAYADI P.O., SOORANADU VADAKKU, KOLLAM.

BY ADV. SRI.B.MOHANLAL
SMT.P.PADMAPRIYA

RESPONDENTS:

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1. THE INDUSTRIAL TRIBUNAL,
KOLLAM.

2. SMT. CHANDRAMATHY,
KUZHIVILAYIL VEEDU, ANAYADI P.O.,
SOORANADU VADAKKU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P (C) NO. 29606 OF 2006 - Y

Dated this the 12th day of September, 2007

J U D G M E N T

The petitioner is the management in I.D.No.46 of 2002 before the Industrial Tribunal, Kollam. The issue for adjudication was "whether the denial of employment to Smt.Chandramathi, Shelling worker of Thankom Cashew Factory, Anayadi is justifiable or not, if not what relief the worker is entitled to?" The contention of the management before the Industrial Tribunal was that the workman was dismissed for mis-conduct. However, it was admitted that no enquiry was conducted in which the workman was found guilty. The management attempted to prove alleged mis-conduct against the workman. However, the Industrial Tribunal found that the management was not successful in proving the alleged mis-conduct. In the above circumstances, the workman was directed to be

reinstated in service with continuity of service and 50% back wages. Ext.P2 is the award passed in that I.D. The petitioner is challenging Ext.P2 in this writ petition.

2. The petitioner raises two contentions. First is that the petitioner is not an industry as defined under Section 2 J of the Industrial Disputes Act. Second is that the petitioner has adduced sufficient evidence before the Industrial Tribunal to prove the mis-conduct against the workman and therefore, the findings in Ext.P2 are perverse.

3. The contention that the petitioner's establishment is not an industry, is not seen to be raised before the Industrial Tribunal. Further, the petitioner's contention that since the petitioner's establishment is a seasonal factory, it would not come within the definition of industry under Section 2J of the Industrial Disputes Act, does not tally to me at all. Whether seasonal or otherwise, admittedly, it is a factory. The definition of

factory in Section 2 J of the Industrial Disputes Act does not exclude seasonal factories. In any event, I cannot accept the proposition that in a seasonal factory, an employer can dismiss the workman at his will. Therefore, I do not find any merit in the contention that the petitioner's establishment is not an industry coming within the definition of Section 2 J of the Industrial Disputes Act. As far as the findings on merit are concerned, on a perusal of Ext.P2 award, I find that the Tribunal has given cogent reasons for coming to the conclusion, it reached in Ext.P2 award. Further, the petitioner-management has not adduced any reliable evidence whatsoever to prove any mis-conduct on the workman involved. Even in his own evidence which is produced as Ext.P3, he does not categorically say that the workman was involved in any mis-conduct. He only says that he suspected mis-conduct. Suspicion would not take the place of evidence. Therefore, on that

account also, I do not find any merit in the contentions of the petitioner. Accordingly, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED: 07-09-2007